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III

NOTE ON THE INDIAN PENAL CODE

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The law dealing with offences affecting human life is fully set out in Sections 299 to 311 of the Indian Penal Code, and I will quote a part of this for the convenience of Western readers.

299. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

300. Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

Secondly—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

Thirdly—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

Fourthly—If the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury aforesaid.

Exception 1.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:—

First—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Exception 2.—Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Exception 3.—Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon

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a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner. 177 671

Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

302. Whoever commits murder shall be punished with death, or transportation for life, and shall also be liable to fine.

304. Whoever commits culpable homicide not amounting to murder, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death.

Sir Cecil Walsh considered that these definitions were too complicated for the situations to which they were normally applied. 'The Indian Penal Code has always been considered a masterpiece of codification, and is the admiration of experts in jurisprudence. The beautifully moulded definitions of murder, and of culpable homicide not amounting to murder, set out every phase of thought through which a man's mind may pass when he is engaged in a fight and burning to defeat and injure his enemy. But men do not think aloud in a confused fight when they are "seeing red" and expecting every minute to be knocked out themselves. How are you to apply almost metaphysical processes of reasoning to the mental processes of half-mad savages, when you are not quite sure what the real facts are? In practice, these works of art in draftsmanship break down, and the simple English dichotomy of "murder" or "manslaughter" is to be preferred'.[1]

[1] Walsh, *Crime in India*, pp. 29 f.